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VIA ULS

Blaise Scinto, Chief, Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Request for Waiver of 47 C.F.R. §§ 27.53(h)(1) and 27.53(h)(2)(iv)

Dear Ms. Scinto:

Pursuant to Sections 1.3 and 1.925(b)(3)(i) of the Commission's rules,¹ DISH Network Corporation, on behalf of its wholly-owned subsidiaries Gamma Acquisition L.L.C., DBSD Corporation, and American H Block Wireless L.L.C (collectively, "DISH"), respectfully requests that the Wireless Telecommunications Bureau ("WTB") act under its delegated authority (pursuant to Sections 0.131 and 0.331)² to waive Sections 27.53(h)(1) and 27.53(h)(2)(iv) of the Commission's rules.

These rules govern out-of-band emissions ("OOBE") from equipment operating in the Upper H Block (1995-2000 MHz) into the Lower AWS-4 Band (2000-2020 MHz), as well as emissions from equipment operating in the Lower AWS-4 Band into the Upper H Block. No OOBE limits within the contiguous 1995-2020 MHz band are necessary, however, because both of these bands are licensed to DISH on a nationwide basis. The requested waiver would permit DISH and/or its equipment vendors to certify equipment that operates across both the Upper H Block and the Lower AWS-4 spectrum from 1995-2020 MHz with no OOBE limits within the contiguous band and at OOBE levels attenuated by $43 + 10 \log_{10}(P)$ outside those bands.

BACKGROUND

Because the AWS-4 and H Block band plans originally placed the Lower AWS-4 uplink spectrum (2000-2020 MHz) immediately adjacent to Upper H Block downlink spectrum (1995-2000 MHz), the Commission imposed tighter OOBE limits on each spectrum block in order to

¹ 47 C.F.R. §§ 1.3, 1.925(b)(3)(i).

² *Id.* §§ 0.131, 0.331.

protect operations in the adjacent band.³ This was relevant and applicable so long as the AWS-4 spectrum was used for *uplink* operations.

On September 9, 2013, DISH filed a petition for waiver requesting the option to use the Lower AWS-4 Band either for downlink or uplink operations.⁴ WTB granted the DISH request.⁵ WTB noted that grant of the request would serve the public interest “by obviating in the event of downlink use the need for certain interference limitations that would otherwise govern both AWS-4 and adjacent H Block operations.”⁶ WTB also determined that waiving Section 27.53(h)(2)(ii), which sets forth the OOB limits for operations in the Lower AWS-4 Band, was appropriate.⁷

WTB recognized at the time that the corresponding H Block rule “imposes a tighter OOB limit than is typically set forth in the Commission’s rules and was adopted to address a technical issue arising from the specific interference environment in which uplink operations in the Lower AWS-4 Band would need to coexist with downlink operations in the adjacent Upper H Block.”⁸

WTB noted that, should DISH elect to use the Lower AWS-4 Band for downlink purposes, the interference environment effectively would consist of one continuous downlink band from 1930-2020 MHz, comprised of PCS, H Block, and AWS-4 spectrum. The rules and requirements in place would then require OOB protections of all adjacent blocks within this spectrum range, including from the Lower AWS-4 Band into the Upper H Block, at a level of $43 + 10 \log_{10}(P)$ dB. The only exception in the Commission’s rules to this consistent OOB limit between adjacent blocks would be the Section 27.53(h)(2)(iv) requirement that operations in the Upper H Block attenuate OOB at $70 + 10 \log_{10}(P)$ dB into 2005-2020 MHz. WTB observed:

Such a discrepancy pertaining solely to the Upper H Block rules would appear to be unnecessary if downlink is elected in the adjacent Lower AWS-4 Band. Indeed, DISH has recognized that the OOB limits for Upper H Block emissions into the Lower AWS-4 Band could be relaxed if it is granted the flexibility, and so elects, to use the Lower AWS-4 Band for downlink operations. Thus, absent the potential for harmful interference to adjacent Lower AWS-4 Band operations, it would appear appropriate to examine whether to relax the OOB limits on the Upper H Block.⁹

WTB found, however, that it was premature to address relaxing the H Block OOB requirements of $70 + 10 \log_{10}(P)$ dB back in 2013, “given that the H Block auction had not yet occurred and

³ See *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16111 ¶ 18, 16126-45 ¶¶ 61-100, 16157-61 ¶¶ 135-151 (2012); *Service Rules for Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, Report and Order, 28 FCC Rcd 9483, 9508-13 ¶¶ 63-73 (2013).

⁴ See DISH Network Corporation, Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) and Request for Extension of Time, WT Docket No. 13-225 (dated Sept. 9, 2013).

⁵ *DISH Network Corporation*, Memorandum Opinion and Order, 28 FCC Rcd 16787, 16795 ¶ 20 (WTB 2013).

⁶ *Id.*

⁷ *Id.* at 16798 ¶ 25.

⁸ *Id.* at 16802 ¶ 36.

⁹ *Id.* (citation omitted).

that it was not yet clear if the AWS-4 band will be used for uplink or downlink.”¹⁰ WTB invited any party that desired a waiver or change of any of the H Block rules in light of its order, or DISH’s subsequent actions pursuant to the order, to file an appropriate request.¹¹

Subsequently, DISH has become the nationwide H Block licensee at 1995-2000 MHz; and it also has elected to use the AWS-4 spectrum at 2000-2020 MHz for downlink operations. In order to harmonize operations across its licensed spectrum, DISH requests that the FCC waive Sections 27.53(h)(1) and 27.53(h)(2)(iv), thus allowing DISH to utilize the H Block and the AWS-4 spectrum as a contiguous band, with OOB limits applying only outside the H Block and AWS-4 Band (i.e., below 1995 MHz or above 2020 MHz) at an attenuation level of $43 + 10 \log_{10}(P)$.

As the nationwide licensee of both the AWS-4 and the H Block spectrum, no other licensees are adversely affected by providing the requested relief. Emission limits outside the AWS-4 spectrum that might affect other licensees do not need to be modified.

GRANT OF THE REQUESTED WAIVER IS JUSTIFIED

The Commission may waive its rules for “good cause” shown.¹² Good cause may be found when a waiver would not undermine the underlying purposes of the rule and otherwise would serve the public interest;¹³ or requiring strict compliance with a rule would be “inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”¹⁴ Section 1.925 of the Commission’s rules, which pertains to wireless radio services, further provides that “the Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”¹⁵

Here, the requested waiver will offer public interest benefits and “would not undermine the underlying purposes” of the AWS-4 rules. The purpose of Sections 27.53(h)(1) and 27.53(h)(2)(iv) had been to mutually protect downlink operations in the Upper H Block and uplink operations in the Lower AWS-4 Band. Now that DISH is the common licensee for both, it has elected to use the entire 1995-2020 MHz band for downlink operations. The criteria for protection of adjacent band operations is, therefore, not applicable anymore. Grant of this waiver request will serve the public interest and the goals of the Commission’s spectrum policy by eliminating technical limitations that are unnecessary.

¹⁰ *Id.* at 16802 ¶ 37.

¹¹ *Id.*

¹² 47 C.F.R. § 1.3.

¹³ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also 47 C.F.R. § 1.925(b)(3)(i).

¹⁴ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁵ *Id.* § 1.925(b)(3). This rule applicable to wireless services requires “substantially the same” showing as 47 C.F.R. § 1.3. *Barry P. Lunderville*, Memorandum Opinion and Order, 28 FCC Rcd 665, 671 ¶ 14 n.51 (2013).

The FCC has granted waivers to allow licensees greater flexibility in the use of their spectrum, particularly when the rule's underlying goal is to facilitate wireless deployment.¹⁶ Similarly, the Commission has looked favorably upon waivers that enhance spectrum efficiency and thereby enhance communications capabilities generally.¹⁷ The FCC's waiver precedent also shows the agency's interest in solving technical challenges that might otherwise stymie investment or innovation.¹⁸ Harmonizing the OOB limits for the adjacent Upper H Block and Lower AWS-4 Band will enable more efficient investment and use of both bands.

Please contact the undersigned if you have any questions.

DISH Network Corporation

By: _____/s/_____

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¹⁶ See, e.g., *Omnipoint Request for Broadband Declaratory Or Waiver Concerning PCS Emission Limits Rule Section 24.238*, Order, 15 FCC Rcd 13422, 13422 ¶ 1 (WTB 2000) (granting broadband PCS licensees a waiver of OOB limits where adjacent spectrum is separately licensed to the same entity or a cooperating entity); *Globalstar Licensee, LLC*, Order and Authorization, 23 FCC Rcd 15975 (2008).

¹⁷ *State of Florida, Department of Management Services, Division of Telecommunications*, Order, 26 FCC Rcd 7730, 7732 ¶ 6 (PSHSB 2011) (granting waiver Section 90.531(b)(1)(iii) in part because "the public interest will be served by grant of the waiver because the [proposed system], will provide greater spectrum efficiency – and hence enhanced communications capability...."); *City of Mesa, Police Department*, Order, 26 FCC Rcd 8466, 8468 ¶ 6 (PSHSB 2011) (same); *State of Colorado, Governor's Office of Information Technology*, Order, 27 FCC Rcd 6051, 6053-54 ¶ 7 (PSHSB 2012) (same); *State of New Jersey, Office of Information Technology*, Order, 28 FCC Rcd 1358, 1361 ¶ 8 (PSHSB 2013) (same); *State of Idaho, Bureau of Homeland Security*, Order, 28 FCC Rcd 3251, 3253-54 ¶ 6 (PSHSB 2013) (same).

¹⁸ *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, 26 FCC Rcd 16878, 16885 ¶ 16 (WTB & OET 2011); *Request by LoJack Corp. for a Partial Waiver of Section 90.20(e)(6) and Part 2 of the Commission's Rules*, Declaratory Ruling and Order, 26 FCC Rcd 12991, 13000 ¶ 21 (PSHSB 2011).